

AMENDMENT #1

Kettula

OFFERED IN THE HOUSE

TO: HCS CSSB 20(FIN)

Page 1, line 1: (title amendment)

Delete all material and insert:

""An Act relating to sentencing factors and penalties for crimes against pregnant women.""

Page 1, line 3, through page 7, line 19:

Delete all material and insert:

**** Section 1.** AS 11 is amended by adding a new chapter to read:

Chapter 32. Enhanced Penalties.

Sec. 11.32.100. Penalties for crimes committed against pregnant women.

(a) Notwithstanding another provision of this title or AS 12, if a person commits a crime defined in this title against a pregnant woman who the person knew or should have known to be pregnant that results in a miscarriage or stillbirth, the crime shall be punished in the following manner:

(1) a crime defined as murder in the first degree under AS 11.41.100 shall be punished by a sentence of 40 - 99 years;

(2) a crime defined as murder in the second degree under AS 11.41.110 shall be punished by a sentence of 30 - 99 years;

(3) a crime defined in this title as a class A felony shall be punished as an unclassified felony in the manner provided for unclassified felonies in AS 12.55.125;

(4) a crime defined in this title as a class B felony shall be punished as a class A felony in the manner provided for class A felonies in AS 12.55.125;

(5) a crime defined in this title as a class C felony shall be punished as a class B felony in the manner provided for class B felonies in AS 12.55.125;

(6) a crime defined in this title as a class A misdemeanor shall be punished as a class C felony in the manner provided for class C felonies in AS 12.55.125;

(7) a crime defined in this title as a class B misdemeanor shall be punished as a class A misdemeanor in the manner provided for class A misdemeanors in AS 12.55.135.

(b) The penalties in (a) of this section do not apply to acts committed

(1) during a legal abortion to which the pregnant woman, or a person authorized by law to act on the pregnant woman's behalf, consented or for which the consent is implied by law;

(2) during any medical treatment of the pregnant woman or the fetus;
or

(3) by a pregnant woman against herself.

(c) In this section,

(1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth or by an induced abortion, resulting in the complete expulsion or extraction of the fetus from a pregnant woman;

(2) "stillbirth" means the death of a fetus before the complete expulsion or extraction from a woman, other than by an induced abortion, irrespective of the duration of the pregnancy.

* Sec. 2. AS 12.55.125(a) is amended to read:

(a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree enhanced under AS 11.32.100(a)(1) shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who

1 was engaged in the performance of official duties at the time of the murder;

2 (2) the defendant has been previously convicted of

3 (A) murder in the first degree under AS 11.41.100 or former
4 AS 11.15.010 or 11.15.020;

5 (B) murder in the second degree under AS 11.41.110 or former
6 AS 11.15.030; or

7 (C) homicide under the laws of another jurisdiction when the
8 offense of which the defendant was convicted contains elements similar to first
9 degree murder under AS 11.41.100 or second degree murder under
10 AS 11.41.110;

11 (3) the court finds by clear and convincing evidence that the defendant
12 subjected the murder victim to substantial physical torture; or

13 (4) the defendant is convicted of the murder of and personally caused
14 the death of a person, other than a participant, during a robbery.

15 * Sec. 3. AS 12.55.125(b) is amended to read:

16 (b) A defendant convicted of attempted murder in the first degree, solicitation
17 to commit murder in the first degree, conspiracy to commit murder in the first degree,
18 kidnapping, or misconduct involving a controlled substance in the first degree shall be
19 sentenced to a definite term of imprisonment of at least five years but not more than
20 99 years. A defendant convicted of murder in the second degree **or a class A felony**
21 **enhanced under AS 11.32.100(a)(3)** shall be sentenced to a definite term of
22 imprisonment of at least 10 years but not more than 99 years. A defendant convicted
23 of murder in the second degree shall be sentenced to a definite term of imprisonment
24 of at least 20 years but not more than 99 years when the defendant is convicted of the
25 murder of a child under 16 years of age and the court finds by clear and convincing
26 evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a
27 legal guardian, or a person occupying a position of authority in relation to the child; or
28 (2) caused the death of the child by committing a crime against a person under
29 AS 11.41.200 - 11.41.530. **A defendant convicted of murder in the second degree**
30 **enhanced under AS 11.32.100(a)(2) shall be sentenced to a definite term of**
31 **imprisonment of at least 30 years but not more than 99 years.** In this subsection,

1 "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

2 * **Sec. 4.** AS 12.55.155(c) is amended to read:

3 (c) The following factors shall be considered by the sentencing court if proven
4 in accordance with this section, and may allow imposition of a sentence above the
5 presumptive range set out in AS 12.55.125:

6 (1) a person, other than an accomplice, sustained physical injury as a
7 direct result of the defendant's conduct;

8 (2) the defendant's conduct during the commission of the offense
9 manifested deliberate cruelty to another person;

10 (3) the defendant was the leader of a group of three or more persons
11 who participated in the offense;

12 (4) the defendant employed a dangerous instrument in furtherance of
13 the offense;

14 (5) the defendant knew or reasonably should have known that the
15 victim of the offense was particularly vulnerable or incapable of resistance due to
16 advanced age, disability, ill health, or extreme youth or was for any other reason
17 substantially incapable of exercising normal physical or mental powers of resistance;

18 (6) the defendant's conduct created a risk of imminent physical injury
19 to three or more persons, other than accomplices;

20 (7) a prior felony conviction considered for the purpose of invoking a
21 presumptive range under this chapter was of a more serious class of offense than the
22 present offense;

23 (8) the defendant's prior criminal history includes conduct involving
24 aggravated or repeated instances of assault behavior;

25 (9) the defendant knew that the offense involved more than one victim;

26 (10) the conduct constituting the offense was among the most serious
27 conduct included in the definition of the offense;

28 (11) the defendant committed the offense under an agreement that the
29 defendant either pay or be paid for the commission of the offense, and the pecuniary
30 incentive was beyond that inherent in the offense itself;

31 (12) the defendant was on release under AS 12.30.020 or 12.30.040 for

1 another felony charge or conviction or for a misdemeanor charge or conviction having
2 assault as a necessary element;

3 (13) the defendant knowingly directed the conduct constituting the
4 offense at an active officer of the court or at an active or former judicial officer,
5 prosecuting attorney, law enforcement officer, correctional employee, fire fighter,
6 emergency medical technician, paramedic, ambulance attendant, or other emergency
7 responder during or because of the exercise of official duties;

8 (14) the defendant was a member of an organized group of five or
9 more persons, and the offense was committed to further the criminal objectives of the
10 group;

11 (15) the defendant has three or more prior felony convictions;

12 (16) the defendant's criminal conduct was designed to obtain
13 substantial pecuniary gain and the risk of prosecution and punishment for the conduct
14 is slight;

15 (17) the offense was one of a continuing series of criminal offenses
16 committed in furtherance of illegal business activities from which the defendant
17 derives a major portion of the defendant's income;

18 (18) the offense was a felony

19 (A) specified in AS 11.41 and was committed against a spouse,
20 a former spouse, or a member of the social unit made up of those living
21 together in the same dwelling as the defendant;

22 (B) specified in AS 11.41.410 - 11.41.458 and the defendant
23 has engaged in the same or other conduct prohibited by a provision of
24 AS 11.41.410 - 11.41.460 involving the same or another victim; or

25 (C) specified in AS 11.41 that is a crime involving domestic
26 violence and was committed in the physical presence or hearing of a child
27 under 16 years of age who was, at the time of the offense, living within the
28 residence of the victim, the residence of the perpetrator, or the residence where
29 the crime involving domestic violence occurred;

30 (19) the defendant's prior criminal history includes an adjudication as a
31 delinquent for conduct that would have been a felony if committed by an adult;

1 (20) the defendant was on furlough under AS 33.30 or on parole or
2 probation for another felony charge or conviction that would be considered a prior
3 felony conviction under AS 12.55.145(a)(1)(B);

4 (21) the defendant has a criminal history of repeated instances of
5 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,
6 similar in nature to the offense for which the defendant is being sentenced under this
7 section;

8 (22) the defendant knowingly directed the conduct constituting the
9 offense at a victim because of that person's race, sex, color, creed, physical or mental
10 disability, ancestry, or national origin;

11 (23) the defendant is convicted of an offense specified in AS 11.71 and

12 (A) the offense involved the delivery of a controlled substance
13 under circumstances manifesting an intent to distribute the substance as part of
14 a commercial enterprise; or

15 (B) at the time of the conduct resulting in the conviction, the
16 defendant was caring for or assisting in the care of a child under 10 years of
17 age;

18 (24) the defendant is convicted of an offense specified in AS 11.71 and
19 the offense involved the transportation of controlled substances into the state;

20 (25) the defendant is convicted of an offense specified in AS 11.71 and
21 the offense involved large quantities of a controlled substance;

22 (26) the defendant is convicted of an offense specified in AS 11.71 and
23 the offense involved the distribution of a controlled substance that had been
24 adulterated with a toxic substance;

25 (27) the defendant, being 18 years of age or older,

26 (A) is legally accountable under AS 11.16.110(2) for the
27 conduct of a person who, at the time the offense was committed, was under 18
28 years of age and at least three years younger than the defendant; or

29 (B) is aided or abetted in planning or committing the offense by
30 a person who, at the time the offense was committed, was under 18 years of
31 age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang;

(30) the defendant is convicted of an offense specified in AS 11.41.410 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to the victim in furtherance of the offense with the intent to make the victim incapacitated; in this paragraph, "incapacitated" has the meaning given in AS 11.41.470;

(31) the defendant's prior criminal history includes convictions for five or more crimes in this or another jurisdiction that are class A misdemeanors under the law of this state, or having elements similar to a class A misdemeanor; two or more convictions arising out of a single continuous episode are considered a single conviction; however, an offense is not a part of a continuous episode if committed while attempting to escape or resist arrest or if it is an assault upon a uniformed or otherwise clearly identified peace officer; notice and denial of convictions are governed by AS 12.55.145(b), (c), and (d);

(32) the offense is a violation of AS 11.41 or AS 11.46.400 and the offense occurred on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district if students are educated at that office; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900;

(B) "school district" has the meaning given in AS 47.07.063;

(C) "school grounds" has the meaning given in AS 11.71.900;

(33) the defendant is convicted of an offense specified in AS 11.41 and the offense involved physical injury to a pregnant woman.

* Sec. 5. The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 11.32.100, enacted by sec. 1 of this Act, and AS 12.55.125(a) - (c), as amended by secs. 2 - 4 of this Act, apply to crimes committed on or after the effective date of this Act."